IN THE HIGH COURT OF BOMBAY A GOA

WRIT PETITION NO. 53/2005

M/s. Gautam Builders & Developers,
239, Defence Colony, 80 Feet Road,
Indira Nagar, Bagalore 560 038
A registered Partnership firm
Represented by its partner
Mr. Harcharan Singh Maini,
S/o. Late Sansingh Maini,
70 years of age, r/o.239,
Defence Colony Road, 80 feet road,
Indiranagar, Bangalore 560 038 ..... Petitioner.

V/s

Economic Development Corporation,
EDC House, 1st Floor,
Dr. Atmaram Borkar Road,
P.O. Box No.275,
Panaji, Goa. ..... Respondent.

Mr. N. Costa Frias, Advocate for the petitioner.

Mr. A.N.S. Nadkarni, with Mr. H.D. Naik, Advocate for the respondent.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving the Judgment :
1st March, 2005.

Date of reserving the Judgment :
7th March, 2005.

J U D G M E N T : (Per LAVANDE, J.)

Rule. The leaned Counsel for the respondent waives notice. By consent, heard forthwith.

2. By this petition, the petitioner seeks, inter alia, writ of mandamus or any other writ, direction directing the respondent to allot to the petitioner plot Nos. 25-B and 36 at EDC's Patto Plaza.

3. Pursuant to the advertisement dated 20.11.2004, the respondent invited bids in respect of Plot Nos. 25-B and 36, situated at EDC's Patto Plaza at Panaji. In terms of the advertisement, auction was to be held on 7.12.2004 at 11 a.m. and was actually held in which the petitioner was the only bidder. The petitioner offered Rs.7005/- per sq. metre. On 13.12.2004, the respondent wrote to the petitioner that the bid of the petitioner was not accepted and along with the letter, the earnest money deposit of Rs.10,00,000/- deposited by the petitioner was returned to the petitioner. The petitioner filed the present petition on 7.2.2005. On 8.2.2005, the respondent held fresh auction in respect of Plot No.36 for which the minimum bid price was fixed at Rs.8,000/- per sq. metre. On 8.2.2005, when the matter came up for admission, a statement was made on behalf of the petitioner that the petitioner was not interested in taking part in auction which was scheduled on that day. On 8.2.2005, there was no bidder for Plot No.36. The petitioner challenges the action of the respondent in refusing to allot the said plots to the petitioner

although the petitioner was the highest bidder.

4. Mr. Costa Frias, learned Counsel appearing for the petitioner submitted that the petitioner being the highest bidder on 7.12.2004, the respondent was bound to allot the two plots to the petitioner. The learned Counsel further submitted that the respondent had not given any reason in its letter dated 13.12.2004 addressed to the petitioner as to why the bid offered by the petitioner was not accepted and, as such, on this count the action of the respondent which is contrary to law deserves to be set aside. The learned Counsel further submitted that the petitioner had legitimate expectation that having offered the minimum bid mentioned in the advertisement, the petitioner would be allotted the said plots and the respondent having not given any reason as to why it did not accept the offer made by the petitioner, the action of the respondent in refusing the minimum bid, is arbitrary and illegal. The learned Counsel further submitted that the respondent ought to have allotted the two plots to the petitioner. The learned Counsel also submitted that the respondent was bound to follow the norms laid down by it in the advertisement and the petitioner having offered the minimum bid fixed by the respondent, the respondent was not legally entitled to reject the bid of the petitioner. In support of his submissions, the learned Counsel relied upon the following authorities :

(1)***Union of India and ors. vs. Dinesh Engineering***

Corporation and anr. ((2001) 8 SCC 491;

(2)Association of Registration Plates vs. Union of India and others ((2004) 5 SCC 364);

(3)*State of W.D. and others vs. Niranjan Singha* ((2001) 2 SCC 326);

(4)***Union of India and anr. vs. N.P. Thomas,*** (AIR 1993 SC 1605);

5. Mr. Nadkarni, learned Counsel appearing for the respondent submitted that although the petitioner had offered the minimum bid fixed by the respondent, since the petitioner was the only bidder, the respondent decided to hold fresh auction on 8.2.2005, fixing the minimum bid price at Rs.8,000/- per sq. metre. According to the learned Counsel, this was done with a view to get higher revenue. It was further submitted that the petitioner has not made any allegation of malafides against the respondent. It was further submitted that decision to invite fresh bids was with a view to get higher revenue by fixing the minimum bid price of Rs.8,000/- per sq. metre. In support of his submissions, the learned Counsel relied upon the Judgment of the Apex Court in the case of ***M/s. Star Enterprises and ors. vs. City and Industrial Development Corporation of Maharashtra Ltd., and ors.*** ((1990) 3 SCC 280) and an unreported Judgment dated 16.2.2005 of this Court in Writ Petition No.550/2004 ***(Jaykrishna Industries Ltd. vs. EDC and anr.***) Mr. Nadkarni further submitted that while disposing of the said writ petition, which was filed by Jaykrishna Industries Ltd., seeking allotment of Plots

Nos. 36, 37 and 38 on the ground that the petitioner was highest bidder, this Court has observed in paragraph 11 of the said Judgment that the action of the present respondent in not accepting the price of Rs.7,005/- could not be faulted since it was with a view to get higher revenue. Relying on the said observation, Mr. Nadkarni submitted that since the respondent did not accept the only bid with a view to get higher revenue, no fault could be found on that count. In so far as the decision of the Apex Court in ***M/s. Star Enterprises and ors. vs. City and Industrial Development Corporation of Maharashtra Ltd., and ors. (supra),*** is concerned, the learned Counsel submitted that in that case highest offer was not accepted and it was not the case of an offer by one person only. The learned Counsel further invited out attention to paragraph 11 of the said Judgment and submitted that in the said case, the Apex Court chose not to interfere although the highest offer was not accepted, having regard to the facts and circumstances in that case.

6. We have considered the submissions made by the learned Counsel for the parties. We have also gone through the authorities cited. The only point which arises for consideration is whether the respondent was bound to accept the bid of the petitioner of Rs.7005/- per sq. metre in respect of Plots No.25-B and 36 although the petitioner was the only bidder at the auction held on 7.12.2004. According to the respondent, the respondent did not accept the bid of the petitioner since the

respondent expected higher price in respect of the said two plots. In our view, no fault could be found with the action of the respondent in not accepting the bid of the petitioner, who was the only bidder at the auction held on 7.12.2004. The respondent was fully justified in expecting higher revenue and on that count refusing to accept the bid of the petitioner who was the only bidder at the said auction. In this connection, it would be appropriate to quote what the Apex Court said in the case of ***Sterling Computers Ltd. vs. M & N Publications Ltd.,*** ((1993) 1 SCC 445). The Apex Court in paragraph 12 has observed thus:

> "Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of `play in the joints' to the executive"

7. In view of the above discussion, and having regard to the law laid down by the Apex Court, we are of the view that no interference is called for in exercise of Article 226 of the Constitution of India and the

petition deserves to be dismissed. Accordingly, the petition stands rejected with no order as to costs. Rule discharged.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.